



DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR), COMPILATION OF AIR POLLUTION EMISSION FACTORS AP-42 AND SUPPLEMENTS (AP-42) AND INCORPORATION BY REFERENCE

#02-337(APCB) / LSA Document #02-237

Overview

This rulemaking will update any reference to the CFR in Title 326 of the Indiana Administrative Code (IAC) to mean the July 1, 2002 edition. This change will have the effect of updating every rule in Title 326 that incorporates by reference the CFR to ensure that it is consistent with the federal rule, except for rules in which a CFR edition is mentioned by a specific year. This rulemaking will update references to the Compilation of Air Pollution Emission Factors and Supplements (AP-42) to include updates through 2002 and repeal duplicative language. In addition, the language used to incorporate documents by reference is being updated and standardized.

Citations Affected

Amends 326 IAC 1-1-3 concerning references to the Code of Federal Regulations (CFR). Amends 326 IAC 1-1-3.5 concerning references to AP-42 and Supplements. Repeals 14-1-4 concerning availability of federal regulations referenced in Article 14, because this information is presented in each section on which a federal regulation is incorporated by reference.

Affected Persons

Businesses, local governments, and citizens

Reason or Reasons for the Rule

IDEM updates the reference to the CFR and AP-42 to the most current versions. Standardizing and clarifying the language used to incorporate documents by reference ensures that state and federal rules are consistent.

Economic Impact of the Rule

No costs will be incurred as a result of updating the reference to the CFR and AP-42. Any costs associated with the rules incorporated into state rules are due to the federal regulations themselves.

Benefits of the Rule

Updating the reference to the CFR and AP-42 and standardizing the language used to incorporate documents will have a positive effect on businesses, local governments, and citizens by making the state and federal rules consistent.

Description of the Rulemaking Project

INCORPORATION BY REFERENCE

This rulemaking will standardize and clarify the language used to incorporate documents by reference. During the development of rules under Title 326 of the Indiana Administrative Code (IAC), it is often more efficient to refer to or incorporate specific portions of these documents rather than to reprint them in full.

According to IC 4-22-2-21, if incorporation of the text in full would be “cumbersome, expensive, or otherwise inexpedient”, an agency may incorporate by reference “a federal or state statute, rule or regulation; or a code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association”.

Many of Indiana's air quality standards, sampling procedures, monitoring requirements, and various compliance methodologies are based on federal requirements and are supported by guidelines and standards developed by national experts. Incorporation by reference ensures that state rules will not be interpreted in such a way as to conflict with federal law and national policy and allows the state to use the resources of the federal system instead of expending its own rulemaking resources in what would otherwise be an unnecessary duplication of rulemaking effort. Incorporating guidelines and standards developed by experts also helps IDEM to better establish consistent and fair rules for regulated sources.

CODE OF FEDERAL REGULATIONS (CFR)

326 IAC 1-1-3, References to the Code of Federal Regulations (CFR), indicates the yearly edition of the CFR that is applicable to rules that have been incorporated by reference throughout Title 326 of the IAC, unless a different edition is specified in a given rule. By annually updating the reference to the CFR, IDEM is able to incorporate by reference the latest version of the parts of the CFR already incorporated into the air rules, with the exception of those most recently published in the Federal Register (FR).

The 2002 edition of the CFR is a codification of the

general and permanent rules published in the FR as of June 30, 2002. IDEM incorporates citations by reference from Titles 29 and 40.

Title 29 of the CFR, entitled "Intergovernmental Review of Environmental Protection Agency Programs and Activities", contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in 326 IAC 14 (Emission Standards for Hazardous Air Pollutants), 326 IAC (Asbestos Management), and 326 IAC 23 (Lead-Based Paint Program). Many of these regulations are either directly incorporated by reference into Title 326 of the IAC as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for the implementation and enforcement of state rule provisions.

Title 40 of the CFR entitled "Protection of Environment," includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The current version of the CFR referenced in Indiana's air quality rules is dated July 1, 2000. Since that date, a number of new federal rules were promulgated that later were incorporated and referenced in the state rules using their FR citation.

Examples of rules and changes that occurred between July 1, 2000 and June 30, 2002 that will be updated with this rulemaking include:

Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method for PM₁₀, Four New Equivalent Methods for PM_{2.5}, and One New Reference Method for NO₂ (40 CFR 53 and 40 CFR 58)

- EPA examined various methods for monitoring concentrations of ambient air pollutants. Monitoring methods are determined for adequacy in order to meet equivalent status of specific requirements. Designation of these reference and equivalent methods is intended to assist in establishing and operating air quality surveillance systems. 67 FR 15566.

Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (40 CFR 63)

- The previous deadline required sources to take actions based on the previous compliance date of September 30, 2002. The deadline was extended one year until September 30, 2003. 66 FR 49830.

National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities (40 CFR 63)

- A technical correction was issued to reinstate a

portion of the final sentence in 40 CFR 63.1270(a) that was mistakenly deleted during the editing process. Reinstatement of this language will make it clear that the rule only applies to major sources of hazardous air pollutants and that transmission and storage systems are subject to the rule only when a local distribution company is not present. 66 FR 49299.

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63)

- Final rule that affects major sources of petroleum refineries. Hazardous air pollutants that will be reduced include organics (acetaldehyde, benzene, formaldehyde, hexane, phenol, toluene, and xylene); reduced sulfur compounds (carbonyl sulfide, carbon disulfide); inorganics (hydrogen chloride, chlorine); and particulate metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, and nickel). The health effects of exposure include cancer, respiratory irritation, and damage to the nervous system. 67 FR 17762.

National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production (40 CFR 63)

- In 40 CFR 63.1257, paragraph (d)(4)(iii) was redesignated as paragraph (d)(3)(ii). 67 FR 15486.

Redefinition of the Glycol Ethers Category Under Section 112 (b)(1) of the Clean Air Act and Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (40 CFR 63)

- Final rule that revises the definition of glycol ethers to exclude the group "surfactant alcohol ethoxylates and their derivatives (SAED)". SAED compounds were removed because, after review, EPA determined that they did not meet the hazardous air pollutants standards as defined in Section 112(b)(1) of the Clean Air Act. 65 FR 47342.

Protection of Stratospheric Ozone: Removal of Restrictions on Certain Fire Suppression Substitutes for Ozone-Depleting Substitutes and Listing of Substitutes (40 CFR 82)

- Final rule that removes restrictions on the use of certain substitutes for halon fire suppression and explosion protection agents that are used by the fire protection community. In addition, the rule added a substitute to the list of fire suppression and explosion protection agents. 66 FR 63313.

INCORPORATION OF COMPIATION OF AIR POLLUTION EMISSION FACTORS AP-42 INCLUDING SUPPLEMENTS (AP-42)

Compilation of Air Pollution Emission Factors (AP-42) is a document issued by U.S. EPA that is currently

referenced in Title 326 of the IAC. This rulemaking updates the References to the Compilation of Air Emissions Factors AP-42 and Supplements to include updates through 2002 to allow sources to use the most recent version of AP-42.

AP-42 is a fundamental tool for air quality management and is used for developing emission control strategies, determining applicability of permitting and control programs, ascertaining the effects of sources and appropriate mitigation strategies, and a number of related applications. The Fifth Edition of AP-42, Volume I, contains information on over 200 stationary source categories. This information includes brief descriptions of processes used, potential sources of air emissions from the processes and common methods used to control these air emissions. Methodologies for estimating the quantity of air pollutants emissions are presented in the emission factors.

Scheduled Hearings

First Public Hearing: February 5, 2003; Indiana Government Center-South, Conference Center, Room C, 402 West Washington Street, Indianapolis, IN 46204.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules are consistent with federal rules.

Rulemaking Process

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and

the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a section 8 notice. A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Gayla Killough, Rule Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).